

Business ADSL Terms & Conditions

1. Information regarding this Agreement.

The supply of Services under this agreement are provided by FunnelWeb Internet (in this agreement referred to as "our", "we", "us"). FunnelWeb Internet (FunnelWeb) may use third party suppliers and or contractors for the supply of services under this agreement. By using FunnelWeb you have indicated your acceptance of all the terms and conditions referred to in this Agreement. This agreement will be governed by and construed in accordance with the laws of the state of the Australian Capital Territory, Australia. We reserve the right to change or withdraw these Terms & Conditions at any time with 30 days prior notice.

2. Definitions

Agreement means this agreement for the provision of services by us to you.

Charges means any charges payable by you to us pursuant to this agreement.

Service means the supply of Asymmetrical Digital Subscriber Line access as described in this Agreement.

Application Date means the date your completed application and payment is received by FunnelWeb either by fax or standard mail.

Supply Term is any period as described in section 6 of this Agreement.

Carrier means Comindico and Telstra, the upstream suppliers used by FunnelWeb for provision of these services.

Contractor means a licensed telephone installer.

3. Service Description

The Service uses Asymmetrical Digital Subscriber Line technology and any transmission speeds referred to by us, refer to the maximum theoretical speed achievable with the Service under ideal conditions, and you acknowledge that actual speeds may be different than the theoretical speeds. Speeds may vary for reasons, which include but are not limited to: contention ratios, packet overhead, distance from exchange, line infrastructure quality and Customer Premises Equipment (CPE) capability.

Additional Carrier service features may interfere with the supply of the Service. These include but are not limited to: (a) Customer Loop Metering, (b) InContact, (c) Line Hunt, (d) OnRamp, (e) Payphone, and (f) Siteline and that any other telephony equipment used on the same line as the Service must be isolated from interference by the use of an ADSL line filter.

The Service is provided on an "as is" basis and we cannot guarantee the provision of the Service to you where the service is reliant on another Carrier.

The service is only available as an overlay to existing copper local loop provided by the Carrier. Should you cancel your telephone service provided by the local loop, the Service will also cease to function. Data travelling to and from the Service will be metered and is subject to our Acceptable Usage Policy (AUP) in clause 13.

4. Service Components

The Service is the supply of a DSL Tail and access to Internet content. For the purposes of this agreement, an "Individual Service" means the supply of a DSL Tail and Internet.

Each Individual Service comprises:

- (a) A DSL Tail which is an Asymmetric Digital Subscriber Line (ADSL) circuit utilising Telstra's existing Customer Access Network between the customer premises and a Telstra exchange, which is proximate to the customer premises. The traffic flowing over that ADSL circuit is aggregated over the Telstra network and carried to a Point of Interconnect between Comindico and Telstra.
- (b) Interconnectivity between the Comindico Network and the Telstra Network through the relevant Point of Interconnect using ATM technology.
- (c) Access to domestic and international Internet content supplied by Comindico.

5. Service Delivery

Qualified Pairs

5.1 An Individual Service can only be provided over a Qualified Pair (meaning a copper pair which passes Telstra's Service Qualification) where Telstra supplies operational standard telephone services over the same Qualified Pair and accordingly:

- (a) The customer warrants that Telstra or a reseller of Telstra supplies a standard telephone service using that Qualified Pair to the customer;
- (b) The Individual Service is only provided for so long as the customer referred to in clause 5.1(a) continues to acquire that standard telephone service from Telstra or a reseller of Telstra using that Qualified Pair; and
- (c) The Individual Service may be terminated where the customer ceases to acquire a standard telephone service from Telstra or a reseller of Telstra using that Qualified Pair.

Monitoring Services

5.2 If you use a Monitoring Service (meaning a service for the monitoring of customer premises such as remote alarm services), CPE such as central splitters and network termination devices must be installed at your own cost before the Individual Service can be provided and activated.

5.3 In respect of each Individual Service, you acknowledge that the installation and operation of the Individual Service may cause temporary disruption in the standard telephone services received by the customer or a Monitoring Service.

5.4 You agree that the installation and operation of a Monitoring Service may cause temporary disruption to an Individual Service.

5.5 You agree that some incompatible products that might have been available from Telstra to the customer will not be supplied to the customer using the Qualified Pair.

5.6 You agree that any provider of a Monitoring Service used by the customer has been notified that:



- (a) Installation and operation of an Individual Service may cause temporary disruption in the standard telephone services or a Monitoring Service received; and
- (b) Installation of CPE such as central splitters and network termination devices may be required under clause 5.2.

6. Term of this Agreement

This Agreement commences on the Application Date and will continue until either party terminates Services. If you terminate this Agreement you will remain liable for all Charges and all other amounts that you are required to pay under this Agreement.

The Service Supply Term of this agreement is a fixed 12 months from the Service Commencement Date, at which time it will automatically be renewed for a further consecutive fixed period until you provide 30 days written notice requesting termination before the end of the Supply Term. Termination cannot be effected prior to the expiration of a Supply Term.

7. Termination

Should the Service be terminated within 12 months from the Service Supply Term starting Date by any of the following actions:

- (a) cancellation of the Service at your request,
- (b) re-location of your Service from the installed Service address,
- (c) disconnection or cancellation of the phone line that the Service is attached to, you will be liable for a \$110.00 termination fee together with Charges applicable for the Supply Term and any notice period.

Should the Order be withdrawn where order is in progress and prior to installation you will be liable for a cancellation fee of:

- (a) 2-5 days = \$75 once off
- (b) 6 - 15 days = \$350 once off
- (c) 15 or more days = \$570 once off.

FunnelWeb may immediately terminate this Agreement if the User has breached any of the terms of this Agreement or FunnelWeb determines that the User's access to the Service has been in such a way as to breach the Acceptable Use Policy (clause 13).

FunnelWeb retains the right to terminate these Business ADSL Terms & Conditions and all Individual Services under this agreement should Telstra terminate its agreement to supply the DSL Tails. If such an event occurs, FunnelWeb will use commercially reasonable endeavours to source an alternative supplier of DSL Tails and will provide as much notice as possible (and in any event not less than 30 days) before terminating these Business ADSL Terms & Conditions.

Either party may by written notice terminate this Agreement. Verbal terminations will not be accepted. The User will be sent a final statement on which to finalise their account. This account will include excess usage for the month terminated.

8. Notices

Notices under this Agreement may be sent to you by prepaid ordinary post, facsimile, or by electronic mail and will be deemed given: - For ordinary mail, three days after dispatch by express post. - For facsimile or electronic mail, upon acknowledgement of receipt of transmission by our facsimile equipment or our E-Mail server respectively.

All notices to FunnelWeb may be delivered to: FunnelWeb Internet, PO Box 125, Mitchell ACT 2911. Facsimile: 02 6242 6630 or Email: info@fwi.net.au.

A notice will take effect from the time it is received unless a later time is specified.

9. Our Rights and Obligations to you

We will use our best endeavors to provide you with a continuous Service and to provide the necessary information to access that Service, however this is not guaranteed.

Any personal information you provide us will be handled and protected, in accordance with the Privacy Act 2001 and we will obtain and hold any necessary licenses required under law. While we will use our best endeavors to ensure the data you transfer will be received by the intended destination (including electronic mail) we cannot guarantee that it will reach the intended destination.

FunnelWeb may assign any or all of the rights and obligations on its part contained herein, however you may not assign any of your rights or obligations hereto. You authorize FunnelWeb to review your credit rating at any time and to report any delinquencies and any other information concerning you.

10. Your Obligations to us

You must provide us with accurate and truthful information in your Business ADSL Application Form and keep us informed of any changes thereto and you are responsible for all Telecommunications charges required for connecting to the Service.

Should you terminate the Service prior to the expiration of a Supply Term you will immediately pay to us the termination fee and the Charges that would have been payable for the relevant Supply Term had the termination not occurred.

You agree that you will not contact the Carrier for any reason and agree that if you do contact the Carrier that you will be liable for all costs imposed on us by the Carrier. You agree that all IP addresses assigned under this agreement remain the property of the Carrier and that these may change from time to time.

You agree that you will not interfere with the normal operation of the service or any facility, or make either unsafe. You will allow the Carrier, Contractor or FunnelWeb safe access to your premises as required. You agree to ensure that the Carrier, Contractor or FunnelWeb are provided with sufficient and timely access to your premises to enable the Carrier, Contractor or FunnelWeb to provide the service. If you do not have control or have access to the premises in which the service is delivered, you must: Procure for the Carrier, Contractor or FunnelWeb all such access to the premises as may be required and indemnify the Carrier, Contractor or FunnelWeb against any claim by the owner or occupier of the service premises, or any person, in relation to the entry of those premises.

11. Payment & Credit Terms

FunnelWeb offers the following Business DSL product types:

Flat Rate - Subject to the provisions of our Acceptable Use Policy (clause 13), customers will receive unlimited upload and download of Internet traffic for which you will be charged one Flat Rate per month per Individual Service.

Usage Based - Customers will receive a specified amount of upload and download of Internet traffic for which you will be charged one Flat Rate per month per Individual Service. Customer Internet traffic in excess of this specified amount will be charged on a per Mbyte basis as detailed on the Business ADSL Application Form.

Monthly fees are billed one month in advance and excess usage billed one month in arrears. Fees and allowances



coincide with calendar months and are prorated if accounts are started or terminated part way through a month. ADSL services cannot be suspended for holidays or due to non-use.

Supply of the Service is limited to customers with a valid Credit Card only. You acknowledge that should your credit card not be able to be debited for any reason, you will be considered in default and services on the Account may be suspended until payment is received. FunnelWeb will continue to offer all other services on suspended accounts including collection of mail and personal web site hosting.

You will be responsible for any collection fees (including legal fees and any other costs) incurred by us as a result of the collection of outstanding monies including interest at the rate prescribed by the Supreme Court Act plus 4% calculated daily and compounded monthly.

12. Liability & Warranty

Due to technical limitations by the Carrier, the Service can only be provided on a "Qualified Pair" telephone line, as described and determined by the Carrier. The Service is not guaranteed to work and there is no time frame for the restoration of a service in the event of a failure.

You agree to release FunnelWeb against all costs, expenses, liability, loss or damage incurred or suffered by FunnelWeb in conjunction with any claims, actions or proceedings against FunnelWeb (including third party claims or claims by the customer or Telstra) arising out of the following (to the extent that the liability is caused by the provision or cancellation of this Service):

- (a) Disruption in the PSTN services or Monitoring Services of a customer;
- (b) Cancellation of the Individual Service;
- (c) Suspension of the provision of the Individual Service to particular IP Addresses;
- (d) Cancellation of, or refusals to provide, all incompatible products; and
- (e) Possible breaches of the Telecommunications (Customer Service Guarantee) Standard in respect of the customer.

You agree to release and indemnify FunnelWeb, the Contractor and the Carrier for any and all liability arising from the following: (a) Disruption in the delivery of your telephone service, (b) Cancellation of the Service for any reason, (c) Suspension of the provision of the Service to particular Internet Protocol (IP) addresses or (d) Cancellation of, or refusal by FunnelWeb to provide services deemed by the Carrier to be incompatible with the provision of ADSL on the nominated analogue telephone line.

13. Acceptable Use Policy

You agree not to use your Service for illegal purposes and to conduct yourself in a responsible and considerate manner, and not to use the Service in a manner that is detrimental to other customers.

Hacking, Denial of Service (DoS) attacks, spamming, sending unsolicited bulk commercial e-mail, transmission or storage of any data which would contravene Australian laws is forbidden, as is unauthorized access to system areas of FunnelWeb.

You are responsible for not disclosing your username and password to access the Service, and you agree not to disclose these to any other person. You must notify us immediately if your username and/or password is lost. You are responsible and liable for any unauthorized use of the Service.

14. Technical Support and Training

We will not be responsible for training you in the use of this Service. Our Service includes FREE technical support for the installation and commissioning of Service. This support is only provided by Telephone and we are not able to provide on site visits. Support will only be provided for supported applications as listed on our web site and you must direct all service and performance questions to the FunnelWeb Helpdesk, and not to the Carrier.

15 Service Level Agreement

15.1 Introduction

Comindico is committed to providing a reliable, high quality network. To back up our commitment, we offer to you Service Levels and Credits. The Service Levels are measured on a calendar monthly basis. The Service Levels apply throughout the Service Term.

15.2 DSL Site Availability

Description: The period of time in which a Site is operational.

Service Level: A Site is operational if there is the ability of IP traffic to pass between the Customer Premises Equipment (CPE) at that Site and the Internet, other than if the inability arises from an operational failure in end user CPE.

If you believe that a Site is not operational you must contact Funnel Web Support Staff and answer all questions asked. FunnelWeb Support Staff will then issue you a trouble ticket number. The Site will be deemed not operational when:

- (a) the trouble ticket is received by FunnelWeb (unless FunnelWeb establishes that the Site was operational at the time of lodgement of the trouble ticket) or
- (b) when FunnelWeb gives you a notice acknowledging that the Site is not operational. The Site will be deemed restored when the Site becomes operational again.

FunnelWeb endeavours to provide 5 Business Days notice of any Planned Outage. Where an Emergency Planned Outage is required to ensure continuity of service, FunnelWeb may not be able to provide notice of the outage. If FunnelWeb received less than 5 Business Days notice of a Planned Outage from Telstra or its other third party providers, the outage will be deemed to be an Emergency Planned Outage. Service Credit Cancellation: Other than in respect of any Planned Outage or Emergency Planned Outages and subject to the Credit Claim process set out below, a Service Credit will be provided based on the number of hours that a Site is not operational in aggregate during a calendar month, noting that fault duration is measured only by reference to the Customer Trouble Tickets.

15.3 Network Latency

Description: The time it takes a packet to travel from source to destination and back.

Service Level: For Domestic Latency: This is defined as the monthly average of the times taken for packets to make the round trip between the Comindico POP to which a Site is connected and the Comindico POP in Sydney. For International Latency: This is defined as the monthly average of the times taken for packets to make the round trip between the Comindico POP in Sydney and the core routers in each of the POPs in Seattle and San Jose. The domestic network latency will not exceed 150mS for the standard quality of service.

The international network latency will not exceed 250mS for the standard quality of service.

Latency is calculated by using 5 minute polling intervals.

Service Credit Cancellation: For Latency, the Service Credit will be a percentage of the calendar month charge for affected Services. In the calculation of Latency, measurements during a Planned or unplanned Outages are excluded.

15.4 Packet Loss



Description: The difference between the number of packets received and the number of packets sent.

Service Level: Packet Loss is measured as the monthly average of packets lost between the Comindico POP to which a Site is connected and the Comindico POP in Sydney.

The packet loss will be no more than 0.9% of the packets sent for the standard quality of service

Packet loss is calculated by using 5 minute polling intervals

Service Credit Cancellation: For Packet loss the Service Credit will be a percentage of the calendar month charge for affected Service. In the calculation of Packet Loss, measurements during a Planned or Unplanned Outage are excluded.

15.5 Operational Targets

The Targets that the FunnelWeb Support Staff aim to achieve are as follows:

Response Time: The time taken for FunnelWeb to issue you with a Customer Trouble Ticket number.

Restore Time: The time taken between the acceptance of a Customer Trouble Ticket and when the status of that Customer Trouble Ticket is changed to "Resolved". The Customer Trouble Ticket is set to "Resolved" when the Service is restored to its normal operation or providing a temporary work-around that enables normal use of the Service.

15.6.1 Fault Severity Table

Severity Scale: 1

Description: The delivery of Service to a Site is down or there is a critical impact on your business operation and no workaround is available.

Target Response: 15 minutes

Target Restore SHDSL Tails: 4 hours

Target Restore ADSL Tails: 24 hours

Severity Scale: 2

Description: Operation of an existing Service to a Site is severely degraded, or significant aspects of your business operation are negatively impacted by inadequate performance of Comindico products.

Target Response: 1 hour

Target Restore SHDSL Tails: 8 hours

Target Restore ADSL Tails: 48 hours

Severity Scale: 3

Description: Operational performance of the Service is impaired while most business operations remain functional.

Target Response: 4 hour

Target Restore SHDSL Tails: 24 hours

Target Restore ADSL Tails: 72 hours

Severity Scale: 4

Description: You require information or assistance on Comindico product capabilities, installation or configuration. There is clearly little or no impact on your business operation

Target Response: 24 Business Hours

Target Restore SHDSL Tails: N/A

Target Restore ADSL Tails: N/A

15.7 Service Credit Table

The following table determines the rebate percentage. If there is a failure to meet the DSL Site Availability, the Network Latency, or the Network Packet Loss service levels, you can look up the percentage Credit and multiply it by the monthly recurring charge for the Affected Service.

Service Component	Credit			
	0%	5%	10%	15%
DSL Site Availability - Business ADSL and Business SHDSL	Less than 8 hours during a calendar month	Between 8 hours and 22 hours during a calendar month	Between 22 hours and 44 hours during a calendar month	More than 44 hours during a calendar month.
Domestic Network Latency	Under 150mS	150-249mS	250-349mS	Over 350mS
International Network Latency	Under 250mS	250-349mS	350-449mS	Over 450mS
Network Packet Loss	0-0.9%	1.0-5%	5.1-10%	Over 10.1%

15.8 Credit Claim Process

15.8.1 The maximum Credit that will be given in a calendar month is 25% of the amount billed to you for the Site, which is the subject of the Claim.

15.8.2 A Credit will only be given where:

(a) You have lodged with FunnelWeb a written claim ("Claim") for a Credit and provided FunnelWeb with all evidence available to you to support such Claim including a FunnelWeb Trouble Ticket number. Credit claims are not accepted where a FunnelWeb Trouble Ticket has not been provided;

(b) You are current with your payments for all undisputed invoices rendered before the Claim;

(c) Claims have been received by FunnelWeb within 21 days of the end of the month to which the Claim relates; and

(d) FunnelWeb has acknowledged to you responsibility for the breach of the Service Level.

15.8.3 FunnelWeb will make an acknowledgement to you within 30 days of your lodging a Claim and shall provide reasons to you if, for any reason, it denies liability for the Credit or breach of the Service Level. If you disagree with FunnelWeb's denial of a Claim, you shall be entitled to exercise the dispute resolution procedures described in the Master Services Agreement

15.8.4 Claims where FunnelWeb has accepted responsibility will be applied to your billing during the month following FunnelWeb's acknowledgment of responsibility for the breach of the Service Level.

